TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 224.

RUTH DORAN, PLAINTIFF IN ERROR,

vs.

JOHN A. KENNEDY ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JULY 20, 1915.

(23,805)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1914.

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1 18009.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY et al., Defendants.

Return to Supreme Court.

Wm. E. Culkin and John E. Samuelson, Attorneys for Plaintiff.
F. J. McPartlin, Attorney for Defendants.

Filed Nov. 22, 1912. I. A. Caswell, Clerk.

2 STATE OF MINNESOTA:

Supreme Court, April Term, 1912.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint, Defendants.

Complaint.

The plaintiff complains of the defendants and for cause of action alleges:

3 I.

That on November 12th, 1904, Edward O. Norton made homestead entry under the laws of the United States for lot 4 and the west half of the southeast quarter and the southeast quarter of the southeast quarter of section twenty-six (26), township one hundred and sixty (160), north range twenty-eight (28) west, Koochiching county, Minnesota, and that final receipt was to him issued therefor on March 17, 1908, and that thereafter and on September 8, 1908, patent was to said Edward O. Norton duly issued by the United States under the Homestead Laws of the United States.

II.

That on September 6th, 1906, the said Edward O. Norton died, intestate, leaving him surviving Fred J. Norton, William Norton, Margie N. Murphy, Harriet Roche, James Cummings and Ruth

Doran, this plaintiff, as his sole heirs at law and next of kin. That heretofore, and after the said death of the said Edward O. Norton, the said Fred J. Norton, William Norton, Margie N. Murphy, Harriet Roach and James Cummings, duly sold, assigned and transferred all their respective rights, title and interest in and to said above described lands and premises to this plaintiff, and this plaintiff is now the owner in fee simple of said premises.

III.

That said premises are vacant and unoccupied.

IV.

That on March 2nd, 1909, letter- of administration upon
4 the estate of the said Edward O. Norton, were issued out of the Probate Court of Koochiching County, Minnesota, to one John A. Kennedy. That thereafter, and on February 11th, 1910, a pretended order of license to sell the real estate above described for the payment of an alleged indebtedness of the said Edward O. Norton, claimed to have been incurred and contracted by said Edward O. Norton prior to his death and long prior to the issuance of the patent for said land, was by the Probate Court of Koochiching County, Minnesota, issued to said John A. Kennedy, as such administrator; that thereafter, to-wit: On April 16th, 1910, the said John A. Kennedy, pretending to act as such administrator, and pretending to act under and by virtue of said pretended license, did make a pretended public sale of said property for the pretended consideration of six hundred and fifty dollars ($650.00) to one George N. Millard. That on April 29, 1910, the said Probate Court of said Koochiching County, made a pretended order wherein and whereby it pretended to confirm said sale by said administrator to the said George N. Millard. That thereafter, heretofore and on to-wit: May 2nd, 1910, the said George N. Millard made a pretended sale of said estate hereinbefore described to the defendant, Paul Kennedy, who now claims an estate or interest in said premises or lien thereon adverse to this plaintiff.

V.

That the alleged indebtedness upon which said pretended license of sale was issued and said pretended sale was made, was contracted,
if at all, as appears from the files and records of said Probate
5 Court during the life time of the said Edward O. Norton, and a long time prior to the issuance by the United States of the patent to the lands herein described under the Homestead laws of the United States. That said lands and premises were not at the time of the issuance of said pretended license to sell, nor at the time of the pretended sale subject to sale for said alleged indebtedness and never had been, but on the contrary was exempt from such sale under and by virtue of the provisions of section 2296 Revised Statutes of the United States, and acts amendatory thereof

and supplemental thereto, all of which facts were well known to said defendants and each of them at and during all times herein mentioned and referred to.

Wherefore, plaintiff demands judgment.

(1) That she is the owner in fee simple and of said premises.

(2) That the defendants have no estate or interest in said premises or lien thereon.

(3) For the costs and disbursements of this action.

WM. E. CULKIN AND
JOHN E. SAMUELSON,
Attorneys for Plaintiff,
514-515 *Providence Building, Duluth, Minnesota.*

STATE OF MINNESOTA,
County of St. Louis, ss:

Ruth Doran, being first duly sworn, says that she is the plaintiff in the above and foregoing entitled action; that she has heard
6 read the foregoing complaint; that the same is true of her own knowledge, except as to those matters therein stated upon information and belief and as to those matters she believes it to be true.

RUTH DORAN.

Subscribed and sworn to before me this 3rd day of August, A. D. 1910.

[SEAL.] WM. E. CULKIN,
Notary Public, St. Louis County, Minn.

My commission expires April 1st, 1916.

Filed August 5th, 1911. J. H. Drummond, Clerk.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,

vs.

JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint Herein, Defendants.

The defendant, Paul Kennedy, demurs to the complaint of the plaintiff in the above entitled action on the grounds that the same does not state facts sufficient to constitute a cause of action.

Dated this 23rd day of August, 1910.

F. J. McPARTLIN,
Attorney for Defendant Paul Kennedy,
International Falls, Minnesota.

Due and personal service of the within demurrer admitted this 26th day of August, 1910.

WM. E. CULKIN AND
JOHN E. SAMUELSON,
Attorneys for Pl'ff.

7 Filed Dec. 16, 1910. J. H. Drummond, Clerk.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint, Defendants.

Notice of Trial.

SIR: You will please take notice, that the issue of Law in the above entitled action will be brought on for hearing at the next general term of the District Court of the Fifteenth Judicial District, to be held in the Court House in Aitkin, in the County of Aitkin, on the 11th day of October, A. D. 1910, at the opening of said Court on said day, or as soon thereafter as Counsel can be heard.

Dated September 24th, 1910.

Yours respectfully,

WM. E. CULKIN AND
JOHN E. SAMUELSON,
Attorneys for the Plaintiff.

Providence Building, Duluth, Minnesota.

To F. J. McPartlin, Attorney for Defendant Paul Kennedy.

Due service of the within Notice of Trial by copy thereof, is hereby admitted, at the city of International Falls, Minn., the 26th day of Sept. 1910.

F. J. McPARTLIN,
Attorney for Defendant Paul Kennedy.

8 Filed Dec. 16, 1910. J. H. Drummond, Clerk.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, et als., Defendants.

The defendant in the above entitled action, Paul Kennedy, interposed a general demurrer to plaintiff's complaint therein, and the same was brought on for hearing before the undersigned at the October, 1910, General Term of said court held in and for the county of Aitkin in said state, at the Court House in the village of Aitkin, Minnesota, on the 11th day of October, A. D. 1910.

John E. Samuelson, Esq., appearing for and on behalf of the plaintiff; and F. J. McPartlin, Esq., appearing for and on behalf of the defendant, Paul Kennedy.

And the Court considered the files in said action and the arguments of counsel, and being duly advised in the premises.

It is hereby ordered, That said demurrer be and the same is hereby overruled, and the defendant, Paul Kennedy, is given ten (10) days from and after the filing of this order within which
9 to serve an answer, if so advises, upon the plaintiff's attorney.

Dated December 14, 1910.

B. F. WRIGHT,
District Judge.

Filed Dec. 16, 1910. J. H. Drummond, Clerk.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint Herein, Defendants.

Answer of Paul Kennedy.

For his separate answer to the complaint of the plaintiff in the above entitled action, defendant, Paul Kennedy, alleges and shows to the Court:

I.

Denies each and every allegation, matter and thing in said complaint contained setting forth a cause of action, except such as may

be hereinafter expressly admitted, confessed and avoided or otherwise alleged.

II.

10 Admits all of paragraph one of said complaint, but alleges in connection therewith that the final proof upon which receipt and patent was issued as therein alleged was made April 10, 1906.

III.

Admits that part of paragraph two of said complaint as alleges the death of the said Edward O. Norton, and the name of the heirs. As to the transfer to plaintiff alleged therein defendant denies any knowledge or information thereof sufficient to form a belief.

IV.

Admits paragraph three of said complaint.

V.

In connection with paragraph four of said complaint the defendant admits the allegations so far as they state that said estate of Edward O. Norton was acted upon by the Probate Court of Koochiching County. Further in connection with said paragraph four defendant alleges that the said Probate Court had full jurisdiction over said estate and all of its orders were made regularly and that no appeal or objection was ever made by the plaintiff, or anyone in her behalf, or the jurisdiction of said Court questioned in any way prior to the commencement of this action. That the license to sell the land described in said complaint was issued for the purpose of paying the debts of decedent and the expenses of administration as audited and allowed by the Probate Court after due notice given, and to which no objection was ever made by the plaintiff herein or anyone in her behalf or at all. That this defendant is an innocent purchaser of said land for a valuable consideration, and was never notified
11 by the records of the Probate Court of said Koochiching County, Minnesota, or in any other manner, of the claim now made by plaintiff or of any objection on her part against said action.

VI.

As a further defense, defendant alleges on information and belief, that defendant, John Kennedy, loaned to the said Edward O. Norton the money with which the said Edward O. Norton made his final proof and the expenses incident thereto and that such sum then loaned is and constitutes the claim of the said defendant, John Kennedy, against the estate of the said Edward O. Norton, with interest, and no more, and that said loan was made April 9th, 1906, the day before the said Edward O. Norton submitted final proof on his said claim described in said complaint.

VII.

For a further defense defendant alleges that he holds title to this land described in said complaint by virtue of a decree of the Probate Court of Koochiching County, Minnesota, in which said Court the estate of the said Edward O. Norton was probated and in which said county the land described in said complaint is situated, and from said decree of said Court no appeal has been taken by the plaintiff, by anyone in her behalf, or at all, and no objection made by her or anyone prior to the commencement of this action.

Dated this 19th day of December, 1910.

F. J. McPARTLIN,
Attorney for Paul Kennedy, Defendant,
International Falls, Minnesota.

12 STATE OF MINNESOTA,
County of Koochiching, ss:

F. J. McPartlin, being duly sworn, deposes and says that he is the attorney for Paul Kennedy, one of the defendants in the above and foregoing entitled action, that he has read the answer to said complaint, and knows the contents thereof, and that he believes it to be true to the best of his knowledge and information, and that the reason why defendant, Paul Kennedy, has not made this affidavit is that he resides outside of Koochiching County, Minnesota, wherein resides this affiant, his attorney.

F. J. McPARTLIN.

Subscribed and sworn to before me this 19th day of December, 1911.

W. V. KANE,
Notary Public, Koochiching County, Minn.

My Commission Expires April 10, 1915.

Service admitted December 20, 1910.

W. E. CULKIN, AND
JOHN E. SAMUELSON,
Attorneys for Plaintiff.

[SEAL:]

Filed July 24, 1911. J. H. Drummond, Clerk.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,

vs.

JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest or Lien in the Real Estate Described in the Complaint Herein, Defendants.

13 *Reply.*

Plaintiff for her reply to the answer of the defendant herein denies each and every allegation, matter and thing in said answer contained and the whole thereof, except in so far as the same contains admissions of the plaintiff's complaint herein.

Wherefore plaintiff continues to pray for the judgment and relief in her complaint demanded.

W. E. CULKIN, AND
JOHN E. SAMUELSON.
Attorneys for Plaintiff.

514-15 Providence Bldg., Duluth, Minnesota.

Service admitted December 22, 1910.

F. J. McPARTLIN,
Attorney for Defendant.

Filed June 15, 1911. J. H. Drummond, Clerk.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,

vs.

JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest or Lien in the Real Estate Described in the Complaint Herein, Defendants.

To F. J. McPartlin, Attorney for Defendant Paul Kennedy:

Take notice that on the pleadings herein, the plaintiff will move the Court at its Chambers in the Court House in the City of Bemidji, on April 8th, 1911, at 9:30 o'clock A. M., or as soon there-
14 after as counsel can be heard, for an order for judgment notwithstanding the answer herein, as said answer appears on its face to be a sham, irrelevant and frivolous, with costs.

WM. E. CULKIN, AND
JOHN E. SAMUELSON,
Attorneys for Plaintiff,

514-515 Providence Building, Duluth, Minnesota.

Service admitted March 24, 1911.

F. J. McPARTLIN,
Attorney for Paul Kennedy.

Filed June 15, 1911. J. H. Drummond, Clerk.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,

vs.

JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Right, Title, Estate, Interest or Lien Upon or in the Lands Described in the Complaint Herein, Defendants.

Answer of John A. Kennedy.

Defendant John A. Kennedy for his separate answer to the complaint of the plaintiff in the above entitled action, alleges and shows to the Court:

I.

Denies each and every allegation, matter and thing said complaint contains except as hereinafter specifically admitted, confessed and avoided or otherwise alleged.

II.

Defendant alleges that on December 6, 1906, Edward O. Norton died, intestate, in Koochiching County, Minnesota, leaving the property described in the complaint, situated in the County of Koochiching and State of Minnesota.

III.

That prior to the time of his death and on, to-wit: April 9, 1906, said Edward O. Norton, for the purpose of making proof on the land described in said complaint, borrowed from this defendant $200 with which to pay for said land under the Homestead laws of the United States, and then and there agreed upon receipt of title thereto to give a mortgage to this defendant upon said land as security for the repayment of the money so loaned.

IV.

That proof was submitted on said land April 10, 1906, by said Edward O. Norton, which said proof was suspended, pending an investigation by the Special Agent of the General Land Office and that subsequent to Sept. 6, 1906, said suspension was released and final receipt and patent issued upon the proof made April 10, 1906, in the

name of Edward O. Norton, but that subsequent to said date of proof this defendant advanced the further sum of $17, being expenses of making said proof.

V.

That after submitting said final proof on April 10, 1906, said Edward O. Norton did not give the mortgage promised and
16 agreed prior thereto, but thereafter and on May 12, 1906, the said Edward O. Norton agreed in writing to pay this defendant the money advanced for the purpose of making proof, as heretofore stated. That said $200 or any part thereof was never paid by said Edward O. Norton prior to his death, September 6, 1906.

VI.

That on April 28, 1910, there had accumulated for the years 1908 and 1909, taxes, penalties, interest and costs amounting to $63.96 by reason of the taxes of such years upon the land described in said complaint, and which this defendant paid, April 28, 1910.

VII.

That on March 2, 1909, this defendant upon application duly made to the Probate Court of the County of Koochiching, was duly appointed administrator of said estate and letters of administration were on that date issued to him. That pursuant to such letters of administration this defendant paid taxes on said land and all the costs of administration, and for the purpose of being reimbursed as such administrator for the amount of money loaned to the said Edward O. Norton, as heretofore stated, the taxes that had accumulated on said land and the costs of administration, this defendant under license from the Probate Court of said County duly issued, sold at public sale the lands described in said complaint, and the lands were so sold and such sale was duly approved by said Probate Court, prior to the bringing of this action.

17 VIII.

That the plaintiff in this action has had full knowledge of all the facts alleged in this answer long prior to the time when application was made for the probating of the estate of the said Edward O. Norton, and on March 19, 1908, this plaintiff agreed in writing to reimburse and to pay this defendant for the money loaned to said Edward O. Norton for the purpose of securing patent to the land described in said complaint, but failed and neglected and refused at any time to pay said moneys.

Wherefore this defendant asks that this action be dismissed and for judgment for costs and disbursements.

F. J. McPARTLIN,
Attorney for Defendant John A. Kennedy.

STATE OF MINNESOTA,
County of Koochiching, ss:

F. J. McPartlin, being duly sworn, deposes and says that he is the attorney of the defendant, John A. Kennedy, in the above entitled action, and that he has read the foregoing and knows the contents thereof and believes that the allegations therein are true, and that the reason that this verification is not made by said John A. Kennedy, is that he is not a resident of the County of Koochiching, Minnesota, wherein resides this affiant, his attornev.

F. J. McPARTLIN.

Sworn and subscribed to before me this 22nd day of April, 1911.

[SEAL.] J. H. DRUMMOND,
Clerk of District Court.

Filed May 1, 1911. J. H. Drummond, Clerk.

18 STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Right, Title, Interest, or Lien upon or in the Lands Described in the Complaint Herein, Defendants.

Reply.

Plaintiff for her reply to the separate answer of the defendant, John A. Kennedy, denies each and every allegation, matter and thing in said answer contained and the whole thereof, except in so far as the same contains admissions of allegations in plaintiff's complaint herein.

Wherefore, plaintiff continues to pray for the judgment in her complaint demanded.

WM. E. CULKIN AND
JOHN E. SAMUELSON,
Attorneys for Plaintiff, 514-15 *Providence Building, Duluth, Minnesota.*

Filed June 15, 1911. J. H. Drummond, Clerk.

19 STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint, Defendants.

SIR: You will please take notice, That the issue of law and fact in the above entitled action will be brought on for trial at the next General Term of the District Court to be held in and for the County of Koochiching, at the Court House in the Village of International Falls, in said County, on the 11th day of July, A. D. 1911,
20 at the opening of said Court on that day, or as soon thereafter as counsel can be heard.

Dated May 31st, 1911.

Yours respectfully,

WM. E. CULKIN AND
JOHN E. SAMUELSON,
Attorneys for Plaintiff.

To F. J. McPartlin, Attorney for Defendants, John Kennedy and Paul Kennedy.

Due service of the within Notice is hereby admitted on this 7th day of June, A. D. 1911.

F. J. McPARTLIN,
Attorney for Defendants.

Filed June 15, 1911. J. H. Drummond, Clerk.

21 STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint Herein, Defendants.

The above entitled action came on for trial before the court without a jury, at the general July, 1911, term of court in said county, Mr. John E. Samuelson appearing as attorney for the plaintiff, and Mr. F. J. McPartlin appearing as attorney for the defendants, John A. Kennedy and Paul Kennedy. No appearance was made in said action by defendant, George N. Millard, or any of the defendants unnamed.

Certain admissions, which appear in the record, were then made by each of said defendants; without the taking of any testimony, motion was made by the plaintiff for judgment on the pleadings, "with the admissions as to the pleadings;" and it was then agreed by the parties that arguments be submitted on briefs.

The parties having thus expressly assented to the submission of the action and to the determination of the controversy upon the pleadings and the admission made, the court finds as

Facts.

1. That on November 12th, 1904, Edward O. Norton
22 made a homestead entry under the laws of the United States for lot 4, and the west half of the southeast quarter, and the southeast quarter of the southeast quarter of Sec. 26, township 160, North of Range 28 west, Koochiching County, Minnesota.

2. That on April 10th, 1906, the said Edward O. Norton duly made final proof upon said homestead entry.

3. That on September 6th, 1906, the said Edward O. Norton died, intestate, leaving him surviving Fred J. Norton, William Norton, Margie N. Norton, Harriet Roche, James Cummings and Ruth Doran, this plaintiff, as his sole heirs at law and next kin.

4. That the final receipt of the receiver of the United States land office was issued to and in the name of the said Edward O. Norton for said homestead tract on March 17, 1908, and that thereafter and on September 8, 1908, patent was to said Edward O. Norton duly issued by the United States, under the homestead laws of the United States.

5. That after the said death of the said Edward O. Norton, the said Fred J. Norton, William Norton, Margie N. Murphy, Harriet Roche and James Cummings duly sold, assigned and transferred all their respective rights, title and interest in and to the said above described lands and premises to this plaintiff, and this plaintiff is now the owner in fee simple of said premises.

6. That said premises are and were at the commencement of this action vacant and unoccupied.

23 7. That on March 2nd, 1909, letters of administration upon the estate of the said Edward O. Norton were issued out of the probate court of Koochiching County, Minnesota, to the said defendant, John A. Kennedy.

8. That thereafter on February 11, 1910, an order of license to sell the real estate above described for the payment of an alleged indebtedness of the said Edward O. Norton, incurred and contracted by said Norton prior to this death, and for the expense of the administration of said estate, was by the probate court of Koochiching County, Minnesota, issued to said defendant John A. Kennedy, as such administrator.

9. That thereafter on the 16th day of April, 1910, the said John A. Kennedy, acting as such administrator and by virtue of said order of license, made a public sale of said property for the consideration of $650 to the said defendant, George N. Millard.

10. That thereafter on April 29th, 1910, the said probate court of Koochiching County made an order confirming the sale by said administrator to the said George N. Millard. That thereafter on the 2nd day of May, 1910, the said George N. Millard sold and conveyed the said real estate hereinbefore described to said defendant, Paul Kennedy; and as

Conclusions of Law.

1. That the said Ruth Doran, the plaintiff herein, is the owner in fee simple of said premises, to-wit: Lot numbered 4, and the west half of the southeast quarter, and the southeast quarter of the southeast quarter of section numbered 26, in township 160, north of range 28, west, in Koochiching County, Minnesota.

2. That the defendants or either of them have no estate, or interest in said premises, or lien thereon.

Dated September 30th, 1911.

C. W. STANTON,
District Judge.

Mem.

Judgment on the pleadings could not properly be ordered herein for the reason that the answers deny that the plaintiff, Ruth Doran, is the assignee of the title held by the other heirs. But, in view of the fact that the admissions of the defendants at the trial, removed their objection to an order for judgment on the pleadings; and, for the further reason that the parties assented to the submission of the case upon the facts as disclosed by the pleadings and the admission referred to, I have deemed it proper to disregard the form of the motion and to determine the action upon the merits as thus presented.

The question as to whether, immediately upon the death of the homesteader, Edward O. Norton, the title to the land became vested in his heirs is involved in some doubt. If his death had occurred before final proof was made the provisions of section 2291, U. S. Revised Statutes, would have become applicable and his heirs could have made the proof and became vested with the title. But as the deceased entryman made the final proof himself, upon which the patent subsequently issued, and so left nothing to be done by himself or his heirs to complete his title, there seems to be much merit in the contention that at the time of his death he was the legal owner of the land and that the title immediately passed to his estate. But it is needless to discuss this proposition or to cite any of the numerous authorities bearing upon it for the reason that it is not important in the determination of this case.

We will assume, then, that the deceased was the owner in fee of the land at the date of his death and that the title to the land then vested in his heirs, subject to the conditions imposed by both federal and state laws. And this assumed situation seems to be fully in

accord with the provisions of Sec. 2448, U. S. Revised Statutes, which reads: "Where patents for public lands have been or may be issued in pursuance of any law of the United States, to a person who had died, or who hereafter dies, before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentee as if the patent had issued to the deceased person during his life."

The title, then, became vested in this plaintiff and her assignors, subject, under the laws of the state, only to the condition that it might be sold, if necessary, to pay the debts of the deceased and expenses of administration. But what debts could it be sold for? Not for any contracted before the issuance of the patent, according to the provisions of Sec. 2296, U. S. Revised Statutes. And
26 therefore, in this particular case, it could not be sold at all and the title vested in the heirs without condition of any kind, because, as the patent did not issue until long after the entryman's death, no debts for which it could be sold could possibly exist.

The authorities are almost unanimous in holding that Sec. 2296, U. S. Revised Statutes, means just what it says and that a homestead is not subject to the debts of the entryman contracted prior to the issuance of the patent.

Russell vs. Lowth, 21 Minn., 167.
Wallowa Nat. Bank vs. Riley, 45 Pac. (Or.) 766.
Barnard vs. Bowler, 38 Pac. (Cal.) 728.

The only contra cases that I have been able to find are Flannigan vs. Forsythe, 50 Pac. (Okla.) 152, which holds that the exemption does not apply for debts contracted after making the final proof; and Struby-Estabrook Mercantile Company vs. Davis, 31 Pac. (Col.) 495, which holds that the exemption does not apply for debts contracted after the issuance of a final certificate.

This brings us to the inquiry whether the order of the probate court can be reviewed in this action. As the order of license to sell the land was made for the purpose of paying an indebtedness contracted by deceased before the issuance of the patent, the order exceeded the jurisdiction of the court and was unauthorized and void.

Watkin Land Mortgage Company vs. Mullin, Pac. (Kan.) 921.
Sache vs. Wallace, 101 Minn., 169.

Filed October 5th, 1911. J. H. Drummond, Clerk.

27 District Court Fifteenth Judicial District, County of Koochiching.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Interest, Estate, or Lien in the Real Estate Described in the Complaint Herein, Defendants.

Note of Issue.

Issue of fact for Trial by Court.
Last Pleading Served May 10th, 1911.

Wm. E. Culkin and John E. Samuelson, Attorneys for plaintiff.
F. J. McPartlin, Attorney for Defendants.

Will the Clerk Please file this Note of Issue and enter the cause on the Calendar for the July 13th, A. D. 1911 General Term of this Court.

WM. E. CULKIN AND
JOHN E. SAMUELSON,
Attorneys for Plaintiff.

Filed 6-15-1911. J. H. Drummond, Clerk.

28 STATE OF MINNESOTA,
County of Koochiching:

In District Court Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint, Defendants.

Notice of Appeal to Supreme Court.

To John E. Samuelson and Wm. E. Culkin, attorneys for the above named plaintiff, and to J. H. Drummond, clerk of said court:

Please take notice that the above named defendants, John A. Kennedy and Paul Kennedy, appeal to the Supreme Court of the State of Minnesota, from a certain order of the District Court of the Fifteenth Judicial District entered herein, dated September 30th, 1911, and filed with the Clerk of said Court October 5th. 1911, and which said order so appealed from granted a motion for judgment on the pleadings, "with the admissions as to the plead-

ings" in favor of the plaintiff and against these defendants, and which said order decrees the title in and to the real estate described in the complaint in fee simple to this plaintiff and further decrees that these defendants or either of them have no estate, or interest in said premises, or lien thereon, and from the whole thereof.

Dated this 26th day of October, A. D. 1911.

F. J. McPARTLIN,
Attorney for Defendants and Appellants,
International Falls, Minnesota.

Due and personal service of the within notice of appeal is hereby admitted at Duluth, Minnesota, this 28th day of October, A. D. 1911.

WM. E. CULKIN AND
J. E. SAMUELSON,
Attorney- for Plaintiff and Respondent.

Service admitted at International Falls, Minn., this 30th day of October, 1911.

J. H. DRUMMOND,
Clerk of Dist. Court.

Filed this 30th day of Oct. 1911. J. H. Drummond, Clerk.

29 STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint, Defendants.

Undertaking on Appeal.

Whereas, the above named defendants, John A. Kennedy and Paul Kennedy, and each of them, in the above entitled action, have appealed to the Supreme Court of Minnesota, from a certain order of said District Court bearing date of September 30th, 1911, and filed with the Clerk of the District Court of Koochiching County, Minnesota, October 5, 1911.

Now, therefore, we, Pat Lynch and Joseph Lloyd, do undertake, promise, and agree to and with plaintiff, that the said defendants shall pay all costs and charges which may be awarded against them on such appeal, not exceeding the penalty of this undertaking, and shall pay the costs of said appeal and the damages sustained by said plaintiff in consequence thereof, if said order, or any part thereof shall be affirmed, or said appeal shall be dismissed, and shall abide by it as the judgment or order which the Appellate Court may give

therein, not exceeding the sum of two hundred fifty ($250.00) dollars.

Dated this 16th day of October, 1911.

PAT LYNCH,
JOSEPH LLOYD.

30 STATE OF MINNESOTA,
County of Koochiching, ss:

On this 27th day of October, A. D. 1911, personally appeared before me, a Notary Public within and for said County, Pat Lynch and Joseph Lloyd, to me known to be the persons who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

[SEAL.] ERNEST J. HOLLER,
Notary Public, Koochiching Co., Minnesota.

My commission expires February 1st, 1914.

STATE OF MINNESOTA,
County of Koochiching, ss:

Pat Lynch and Joseph Lloyd, being first duly sworn, says each for himself, that he is one of the sureties within named; that he is a resident and freeholder of the State of Minnesota and worth the sum of five hundred (500.00) dollars, double the amount specified in the within undertaking, above his debts and liabilities, and exclusive of his property exempt from execution.

PAT LYNCH,
JOSEPH LLOYD.

Subscribed and sworn to before me this 27th day of October, A. D. 1911.

[SEAL.] ERNEST J. HOLLER,
Notary Public, Koochiching County, Minn.

My commission expires February 1st, 1914.

I hereby approve the above undertaking and the sureties thereon. Dated October 31, 1911.

C. W. STANTON,
District Judge.

Filed this 6th day of November, 1911. J. H. Drummond, Clerk of District Court.

31 STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, 15th Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint Herein, Defendants.

I, J. H. Drummond, Clerk of the District Court above named, do hereby certify that I have compared the foregoing and attached paper writing with the original complaint, notice of trial, demurrer, order overruling demurrer, answer of John A. Kennedy, reply, reply to answer of John A. Kennedy, Notice of motion, note of issue, notice of trial, answer of Paul Kennedy, Findings of the court, notice of appeal to Supreme Court, undertaking on appeal, in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said originals and the whole thereof.

Witness May hand and seal of said Court, at International Falls. this 24th day of November A. D. 1911.

[SEAL.] J. H. DRUMMOND, *Clerk.*

32 17477. In District Court, 15th Judicial District, County of Koochiching. Ruth Doran, Plaintiff, John A. Kennedy et al., Defendants. Certificate of Copy of Record. Filed Nov. 27, 1911. I. A. Caswell, Clerk.

33 STATE OF MINNESOTA:

Supreme Court.

RUTH DORAN, Plaintiff and Respondent,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint Herein, Defendants and Appellants.

STATE OF MINNESOTA,
County of Koochiching:

F. J. McPartlin being first duly sworn deposes and says that he is the attorney for the appellants in the above entitled action. That this case was before the Supreme Court of this state on a former appeal which appeal was taken from an order for judgment on the pleadings but dismissed for want of jurisdiction. On such former appeal the files and records in said case were the same as the files and

records in the case today with the exception of the judgment which has been entered since the dismissal of the former appeal. That this affidavit is made for the reason that an appeal has now been taken from the judgment entered upon the order for judgment from which the former appeal was taken. In order that the District Clerk's return, as made on the former appeal, may be made a part on the return of this appeal insofar as the files and records of his office are identical with the former record.

F. J. McPARTLIN.

Subscribed and sworn to before me this 21st day of November, 1912.

J. H. DRUMMOND,
Clerk District Court.

34 Filed November 22, 1912. I. A. Caswell, Clerk.

18009.

STATE OF MINNESOTA:

Supreme Court.

RUTH DORAN, Respondent,
vs.
JOHN A. KENNEDY et al., Defendants; JOHN A. KENNEDY and PAUL KENNEDY, Appellants.

Upon the affidavit of appellants' counsel, filed on this day and the return on the present appeal, it is

Ordered that the return filed on the former appeal in said cause be and the same hereby is made a part of the return on the present appeal from the judgment, insofar as such former return is pertinent.

Dated November 22, 1912.

CALVIN L. BROWN,
Associate Justice.

Filed Nov. 22 1912. I. A. Caswell, Clerk.

35 STATE OF MINNESOTA,
County of Koochiching:

District Court, Fifteenth Judicial District.

RUTH DORAN Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unnknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint Herein.

Plaintiff's Costs and Disbursements.

Statutory costs	$10.00
2 affidavits	.50
Sheriff's fees	3.00
Clerk's fees (to be taxed)	7.40
Total amount	$20.90

The above bill of costs and disbursements taxed and allowed at $20.90.

Dated June 10th 1912.

[COURT SEAL.] J. H. DRUMMOND, *Clerk.*

Affidavit of Disbursements.

STATE OF MINNESOTA,
County of St. Louis, ss:

John E. Samuelson, being duly sworn, says on oath, that he is one of the attorneys of the plaintiff in the above entitled action; that the foregoing is a true and correct statement of the costs and disbursements of said plaintiff in the above entitled action, and that the foregoing items of disbursements, and each item thereof, have been actually and necessarily paid or incurred therein, by and on behalf of said plaintiff.

JOHN E. SAMUELSON.

Subscribed and sworn to before me this 5th day of June, 1912.

[NOTARIAL SEAL.] WM. E. CULKIN,
Notary Public, St. Louis County, Minn.

My commission expires Apr. 1st, 1913.

Filed this 10th day of June, 1912. J. H. Drummond.

36 STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint Herein, Defendants.

Judgment.

The Issues in the Above Entitled Action were duly brought on for trial before the Hon. C. W. Stanton, one of the Judges of said Court, at a General term of said Court, held on the 24th day of July 1911, and the issues tried, and the decision of this Court, in writing, made and filed in said Court on the 5th day of October, 1911.

Now, on motion, of Wm. E. Culkin and John E. Samuelson, attorneys for the Plaintiff therein, it is hereby adjudged and decreed that the Plaintiff, Ruth Doran, is the owner in fee simple of the following described real estate, to-wit: Lot numbered four (4), and the west half of the southeast quarter and the southeast quarter of the

southeast quarter of section twenty-six (26), in township one hundred and sixty (160), north of range twenty-eight (28), west of the 5th P. M., in Koochiching County, Minnesota; that the above named defendants, or either of them, have no estate or interest in said premises or lien thereon; and that the said plaintiff recover of the said defendants the sum of $20.90, her costs and disbursements as taxed and allowed in this action.

Witness, The seal of said court, at International Falls, County of Koochiching, State of Minnesota, this 10th day of June, 1912.

(Signed) J. H. DRUMMOND,
[COURT SEAL.] *Clerk of District Court.*

Filed June 10th A. D. 1912. J. H. Drummond, Clerk.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY,
37 and also All Other Persons Unknown Claiming Any Title, Estate, Interest, or Lien in the Real Estate Described in the Complaint Herein, Defendants.

Notice of Appeal to the Supreme Court.

To John E. Samuelson and William E. Culkin, attorneys for the above named plaintiff, and J. H. Drummond, clerk of said court:

Please Take Notice, That the above named defendants, John A. Kennedy and Paul Kennedy, appeal to the Supreme Court of the State of Minnesota from a certain judgment of the District Court of the Fifteenth Judicial District entered therein in the above entitled action on June 10, 1912, in favor of said Plaintiff and against said defendants, and which said judgment decrees the title in and to the real estate described in the complaint to the plaintiff in fee simple and further decrees that these defendants, or either of them, have no estate, title or interest in said premises or lien thereon, and which said judgment is for the costs in favor of the plaintiff and against these defendants in the sum of twenty and 90-100 (20.90) dollars and from the whole thereof.

Dated this 18th day of October, 1912.

(Signed) F. J. McPARTLIN,
Attorney for Defendants and Appellants,
International Falls, Minn.

Due and personal service of the within Notice of Appeal is hereby admitted at Duluth, Minnesota, this 4th day of November, 1912.

(Signed) WM. E. CULKIN AND
JOHN E. SAMUELSON,
Attorneys for Plaintiff and Respondent.

38 Service admitted at International Falls, Minnesota, this 5th day of Nov., 1912.

(Signed) J. H. DRUMMOND,
Clerk of District Court.

Filed this 5th day of Nov., 1912. (Signed) J. H. Drummond, Clerk of District Court.

STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY, GEORGE N. MILLARD, PAUL KENNEDY, and also All Other Persons Unknown Claiming Any Title, Estate, Interest or Lien in the Real Estate Described in the Complaint Herein, Defendants.

Undertaking on Appeal.

Whereas, The above named defendants, John A. Kennedy and Paul Kennedy, and each of them in the above entitled action have appealed to the Supreme Court of the State of Minnesota from a certain judgment of said District Court bearing date June 10, 1912, and entered with the Clerk of the District Court of Koochiching County, Minnesota, on said date.

Now, Therefore, We, T. J. Williams and G. B. Partridge, do undertake, promise and agree to and with the plaintiff that the said defendants shall pay all costs and charges which may be awarded against them on such appeal, not exceeding the penalty of
39 this undertaking, and shall pay the cost of said appeal and damages sustained by said plaintiff in consequence of said judgment and if any part thereof shall be affirmed or said appeal shall be dismissed, and shall abide by it as the judgment or order which the Appellate Court may give therein, not exceeding the sum of two hundred fifty ($250.00) dollars.

Dated this 23rd day of October, 1912.

T. J. WILLIAMS.
G. B. PARTRIDGE.

STATE OF MINNESOTA,
County of Beltrami, ss:

On this 23rd day of October, A. D. 1912, personally appeared before me a Notary Public within and for said County, T. J. Williams and G. B. Partridge to me known to be the persons who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

J. W. WILLIAMS,
[SEAL.] *Notary Public, Beltrami Co., Minnesota.*

My commission expires April 1, 1918.

STATE OF MINNESOTA,
County of Beltrami, ss:

T. J. Williams and G. B. Partridge being first duly sworn, says each for himself, that he is one of the sureties within named; that he is a resident and freeholder of the State of Minnesota and worth the sum of five hundred (500.00) dollars, double the amount specified in the within undertaking, above his debts and liabilities,
40 and exclusive of his property exempt from execution.

(Signed) T. J. WILLIAMS.
G. B. PARTRIDGE.

Subscribed and sworn to before me this 23rd day of October, A. D. 1912.

J. W. WILLIAMS,
[SEAL.] *Notary Public, Beltrami Co., Minnesota.*

My commission expires April 1, 1918.

I hereby approve the above undertaking and the sureties thereon.

(Signed) C. W. STANTON,
Judge of District Court.

Dated this 31st day of October, 1912.

Filed this 5th day of November, 1912. (Signed) J. H. Drummond, Clerk of District Court.

41 STATE OF MINNESOTA,
County of Koochiching, ss:

District Court, Fifteenth Judicial District.

RUTH DORAN, Plaintiff,
vs.
JOHN A. KENNEDY et al., Defendants.

Certified Copy of Record.

I, J. H. Drummond, Clerk of the District Court above named, do hereby certify that I have compared the foregoing and attached paper writing with the original affidavit of disbursements and notice of taxation of costs, judgment, notice of appeal to Supreme Court, undertaking on appeal, in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original, and the whole thereof, and that those attached papers together with certified record formerly returned by this Court to the Supreme Court are copies of all files and record in said action.

Witness My hand and seal of said Court, at International Falls, this 21st day of November, A. D. 1912.

[SEAL.] J. H. DRUMMOND, *Clerk.*

Filed Nov. 22, 1912. I. A. Caswell, Clerk.

42 18009.

Order.

Filed July 1, 1913. I. A. Caswell, Clerk.

43 18009.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1913.

No. 142.

RUTH DORAN, Respondent,
vs.
JOHN A. KENNEDY et al., Defendants, JOHN A. KENNEDY et al., Appellants.

Per Curiam:

Upon motion of appellants it is Ordered that the order for judgment as heretofore entered in this cause be modified so that it shall direct the entry of judgment in this court in appellants' favor and awarding to them judgment that they are the owners of the land in question free and clear of all claims thereto on the part of respondent.

Dated July 1, 1913.

44 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the order in the cause therein entitled, as appears from the original, remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom, and of the whole thereof.

Witness my hand and seal of said Supreme Court at the Capitol, in the city of St. Paul, this 1st day of July A. D. 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk.*

45 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said Supreme Court at the Capitol, in the City of St. Paul, July 1, 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk.*

State of Minnesota. Supreme Court. Transcript of Judgment. Filed July 1, 1913. I. A. Caswell, Clerk.

46 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1913.

No. 142.

RUTH DORAN, Respondent,
vs.
JOHN A. KENNEDY et al., Defendants; JOHN A. KENNEDY and PAUL KENNEDY, Appellants.

Pursuant to an order of Court duly made and filed in this cause July 1, A. D. 1913, directing a modification of the judgment heretofore entered herein, so as to award to appellants judgment on the merits, it is here and hereby determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court of the Fifteenth Judicial District, sitting within and for the County of Koochiching be and the same hereby is in all things reversed, and it is further determined and adjudged that appellants herein are the owners of the land in question free and clear of all claims thereto on the part of respondent. And it is further determined and adjudged that the Appellants above named, do have and recover of said Ruth Doran, Respondent herein the sum and amount of One Hundred Eleven and 80/100 Dollars, ($111.80) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed July 1 A. D. 1913.

By the Court.

Attest:

I. A. CASWELL, *Clerk.*

Statement for Judgment.

Cost allowed by statute	$25.00
Printer's fees	64.00
Clerk's fees, Supreme Court	13.00
Affidavits and Acknowledgements	....
Return	9.80
Postage and express	....
Filing Mandate	....
	$111.80

47 18009. State of Minnesota, Supreme Court. Copy of Order for Judgment. Filed June 26, 1913. I. A. Caswell, Clerk.

48 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1913.

No. 142.

RUTH DORAN, Respondent,
vs.
JOHN A. KENNEDY et al., Defendants; JOHN A. KENNEDY and PAUL KENNEDY, Appellants.

Appeal from District Court, Fifteenth Judicial District, County of Koochiching.

This cause having been duly argued and submitted at the General April Term of this court A. D. 1913 upon the return to the appeal herein.

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the Court below, herein appealed from, be and the same hereby is in all things reversed and that judgment be entered accordingly.

Entered June 26 A. D. 1913.

By the COURT.

Attest:

I. A. CASWELL, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original Order for judgment entered in the above entitled cause.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk.*

49 State of Minnesota, Supreme Court. Copy of Minutes of Argument. Filed June 26, 1913. I. A. Caswell, Clerk.

50 STATE OF MINNESOTA:

Supreme Court, General October Term, A. D. 1913.

Monday morning, 9:30 o'clock, April 21, A. D. 1913. Court convened pursuant to adjournment.

Reg. No. 18009. Cal. No. 142.

RUTH DORAN, Respondent,
vs.
JOHN A. KENNEDY et al., Defendants; JOHN A. KENNEDY and PAUL KENNEDY, Appellants.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision and taken under advisement.

A true record.

Attest:

I. A. CASWELL, *Clerk.*

The foregoing is a full and true copy of the Minutes of Argument in the above entitled cause.

Attest:

I. A. CASWELL, *Clerk,*
By —— ——, *Deputy.*

51 18009. State of Minnesota, Supreme Court. Ruth Doran, Respondent, vs. John A. Kennedy et al., Appellants. Judgment Roll. Filed June 26, 1913. I. A. Caswell, Clerk.

52 *Assignment of Errors.*

RUTH DORAN, Plaintiff and Respondent,
vs.
JOHN A. KENNEDY et al., Defendants and Appellants.

I.

The lower court erred in holding, in its order dated September 30, 1911, that the plaintiff, Ruth Doran is the owner in fee of the land described in the complaint, and that the defendants herein have no right, title or interest therein.

II.

The lower court erred in holding that Section 2296 United States Revised Statutes applied to the facts in this case.

III.

The lower court erred in holding that the Probate Court without jurisdiction to order the sale of the land described in the complaint, and that its decree was void.

IV.

The lower court erred in not holding that the decree of the Probate Court authorizing the sale of said land to pay the costs of administration was valid, regardless of the fact as to whether there were any debts for which the estate was liable.

V.

The lower court erred in not ordering judgment on the pleadings in favor of the defendant, for the reason that the plaintiff is estopped by the record of the Probate Court.

F. J. McPARTLIN,
Attorney for Defendants and Appellants.

Filed March 10, 1913. I. A. Caswell, Clerk.

53 18009. State of Minnesota Supreme Court. Ruth Doran, Respondent, vs. John A. Kennedy et al., Defendants, John A. Kennedy et al., Appellants. Opinion and Syllabus. Filed May 29, 1913. I. A. Caswell, Clerk. April Term A. D. 1913. Hallam J. Brown, C. J., Dissenting.

54 18009.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1913.

No. 142.

RUTH DORAN. Respondent,
v.
JOHN A. KENNEDY et al., Def'ts; JOHN A. KENNEDY et al., Appellants.

Syllabus.

1. The issuance of letters of administration by the probate court of the county where a deceased person resided in his life time is conclusive in a collateral action of the regularity of the proceedings resulting in their issuance, unless want of jurisdiction appears affirmatively on the face of the record.

2. A person who has complied with all the requirements necessary to entitled him to a patent of land from the United States government is regarded as the equitable owner thereof. In the

event of his death, the land will form part of his estate and will descend in accordance with state laws. This applies to a homestead entryman who has commuted to a cash purchase and has made final proof and payment.

3. The probate court has jurisdiction over such land. It may rightfully order it sold to pay certain demands. A sale of such land cannot be attacked in a collateral action to quiet title, on the ground that the probate court improperly ordered it sold. The heirs had one day in court when the orders pertaining to such sale were considered by the probate court. They are entitled to no more.

4. A person entitled to a homestead exemption under the federal law may waive it by his voluntary act, or by acquiescing in a sale of the land to pay debts from which it is in fact exempt.

Judgment reversed.

55 **18009.**

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1913.

No. 142.

RUTH DORAN, Respondent,
v.
JOHN A. KENNEDY et al., Def'ts; JOHN A. KENNEDY et al., Appellants.

Opinion.

19

The administrator of the estate of Edward O. Norton, deceased, sold the land here in controversy under license issued by the probate court of Koochiching County. The purchaser was George N. Millard. He conveyed to the defendant Paul Kennedy. Plaintiff is one of the heirs of said Norton and she has acquired the interest of all the other heirs. She brings this action to quiet title to the land. This is accordingly not an appeal from any order of the probate court concerning the sale. It is an independent action. The attack here made upon the orders of the probate court is a collateral attack.

The probate court is a court of general jurisdiction. In the absence of fraud, its orders and decrees cannot be attacked in a collateral action, except in case of want of jurisdiction of the court to make them, and then only when the want of jurisdiction appears affirmatively on the face of its record. This is well settled. Davis v. Hudson, 29 Minn., 27. It is the contention of plaintiff that the sale of this land in the probate proceedings was void; that the court had no jurisdiction to appoint the administrator at all;
56 and that it had no jurisdiction to order a sale of this land.

1. The first contention is that the probate court had no jurisdiction to appoint an administrator. We cannot so hold.

The complaint alleged that defendant John A. Kennedy was appointed administrator, and the court so found. In neither the complaint nor the findings is there any suggestion that the appointment was irregular. In a collateral proceeding, such as this, the letters of administration issued by the probate court of the county where decedent resided are conclusive of the regularity of the proceedings resulting in their issuance, unless want of jurisdiction appears affirmatively on the face of the record. Pick v. Strong, 26 Minn., 303; Moreland v. Lawrence, 23 Minn., 84. Counsel for plaintiff argue, that the existence of property of deceased was essential to the jurisdiction of the probate court to appoint an administrator, Fitzpatrick v. Simonson, 86 Minn., 140; that the land in controversy was not the property of deceased and that he left none other. There is no pretense at either pleading or proof that the record of the probate court showed that deceased left no other property or that such was the fact. It will appear, however, from the next paragraph that in our judgment the land in controversy was the property of deceased at the time of his death.

2. This brings us to plaintiff's next contention that the
57 probate court could not authorize a sale of this land, because it was not part of the estate of the deceased. We cannot sustain this contention. The facts are as follows:

On November 12, 1904, deceased made a homestead entry upon this land. He thereafter commuted his homestead entry to a cash purchase, as he was authorized by law to do. U. S. Rev. Statutes, 2301. On April 10, 1906, he made final commutation proof upon said homestead entry and made full payment to the United States for the land. On September 6, 1906, he died. On March 17, 1908, the receipt of Receiver of the U. S. Land Office was issued in his name. On September 8, 1908, a patent was issued by the United States government in his name. On March 2, 1909, letters of administration were issued.

Although the homestead entry was commuted to a cash purchase, it still retained the incidents of a homestead entry, for the commutation of a homestead claim is the consummation of the homestead right and not an exercise of a pre-emptive one. Cotton v. Struthers, 6 L. D. 288; Ball v. Graham, 6 L. D. 407; Case of James Brittin, 4 L. D. 441; Case of Lipinski, 13 L. D. 439; Clark v. Bayley, 5 Ore., 343.

The homestead act (U. S. Rev. Statutes, 2291) provides that if the person making homestead entry dies before making final proof, such proof may be made by his widow, or, in case of her death, by his heirs or devisees. In such case the right to the patent accrues first to the widow, or, if none, then to the heirs or devisees. The land is no part of the estate of the entryman and does not descend as such. It is disposed of in accordance with the act of Con-
58 gress, and the patentee takes his title not by descent from the ancestor, but by purchase from the United States Government.

But after final proof the rule is different. It is a general rule that, "A person who complies with all the requisites necessary to

entitle him to a patent * * * is to be regarded as the equitable owner" of the land. Wirth v. Branson, 98 U. S., 118; Robinson v. Caldwell, 67 Fed. 391; United States v. Freyberg, 32 Fed. 195. When the right to a patent has once become vested, it is equivalent, so far as the government is concerned, to a patent actually issued. The execution and delivery of the patent after the right to it is complete are the mere ministerial acts of the officer charged with that duty. Stark v. Starrs, 6 Wall., 402; Barney v. Dolph, 97 U. S. 652; Simons v. Wagner, 101 U. S. 260; Camp v. Smith, 2 Minn., 155 (Gil. 131); St. Paul & S. C. Ry. Co. v. Ward, 47 Minn., 40, 46 (homestead case); Hayes v. Carroll, 74 Minn., 134, 137 (homestead case). Such person is not prejudiced by the issuance of a patent to another. Wirth v. Branson, supra; Cornelius v. Kessel, 128 U. S. 456; Robinson v. Caldwell, supra; United States v. Freyberg, supra. He may sell his interest notwithstanding statutes which prohibit a sale before a patent issues. Barney v. Dolph, supra; Simmons v. Wagner, supra; Stark v. Starrs, supra; Case of Eberhard Querbach, 10 L. D., 142 (a homestead case); St. Paul & Sioux City R. Co. v. Ward, 47 Minn., 40, 46; Sims v. Morrison, 92 Minn., 341. He may make a valid mortgage thereof. Lewis
59 v. Wetherall, 36 Minn., 386 (homestead case); Lang v. Morey, 40 Minn., 396. It is subject to taxation by the state and local authorities. Carroll v. Safford, 3 How., 441; Clavenport v. Lamb, 13 Wall, 418; Wisconsin Central Ry. Co. v. Price Co., 133 U. S., 496; Case of Joseph Ellis, 21 L. D., 377; Smith v. Murphy's heirs, 24 L. D. 139; County of Polk v. Hunter, 42 Minn., 312; State v. Johnson, 111 Minn., 255, 263; Staloch v. Holm, 100 Minn., 276. It naturally follows that it will descend to his heirs according to the laws of the state wherein it is situate; and such is the law. Carroll v. Safford, 3 How., 441; 461; Strain v. Hostetlas, 17 L. D. 293 (homestead case); Case of C. P. Cogswell, 3 L. D. 23; Case of Daniel Witter, 3 L. D. 38; County of Polk v. Hunter, 42 Minn., 312; Hayes v. Carroll, 74 Minn., 134, 137; Rogers v. Clark Iron Co., 104 Minn., 198, 221. In Case of C. P. Cogswell, 3 L. D. 23, supra, it is said: "It is a fact generally known that * * * such title for the purposes of private and judicial sale, taxation, inheritance of real estate, and all other kindred objects, is treated by the courts, the local legislatures and individuals in the same manner as if a patent had issued."

We hold that Edward O. Norton was the equitable owner of this land at the time of his death. It descended according to the laws of this state, and was part of his estate to be administered.

3. The next contention is that, even if this land was part of the estate of deceased, the probate court had no jurisdiction to sell it, because it was exempt under act of Congress. U. S. Rev. Stat., 2296, which was part of the original homestead act, provides that,
60 "No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor." Defendants urge some reasons why in their opinion this exemption does not apply to the facts of this case. It is unnecessary to determine the

force of these contentions, for it seems clear that this probate sale cannot be attacked in this collateral proceeding on this ground. The property was part of the estate of deceased. The probate court had jurisdiction over it. That court had the unquestioned power to authorize a sale of it to pay certain classes of obligations. It might be sold to pay liabilities arising out of torts of deceased, 32 Cyc., 1084; Brun v. Mann, 131 Fed. 145. Had the patent issued when it should have issued it might have been sold to pay debts incurred thereafter and before the death of deceased. Whether there were facts to warrant a sale in any given case was a question which the probate court was obliged to determine and which that court and no other had jurisdiction to determine. This question was considered by the probate court and was determined adversely to plaintiff. Then was the time for the plaintiff to present her contention in court. No fraud or artifice was practiced to prevent her doing so. In fact, in her brief she claims that she did in fact appear. If the determination of the probate court was wrong, her remedy was to appeal from that determination. The heirs were entitled to one day in court but not to two. When a probate court with jurisdiction over property for purposes of administration, and for purposes of sale in certain
61 cases, orders and confirms a sale of the same, it is the right and duty of an heir to litigate the propriety of such orders in that proceeding. The heir cannot sit by, permit the sale to be made, and then bring another and collateral action in another court to litigate again the propriety of the sale, and to procure a decree declaring it to be void. Such a practice would place no end to litigation.

The statute relating to sales of real estate by an administrator prescribes five grounds on which such a sale may be collaterally attacked. Rev. Laws, 3774. To this extent the statute modifies the rule as to the verity of probate court records. There is no claim here that this probate sale is subject to attack on any of the grounds mentioned in section 3774. To this extent only the proceedings may be assailed collaterally by virtue of this statute. In all other respects the orders of the probate court in the matter of administrator's sales is accorded the same presumption as the judgments of courts of superior common law jurisdiction. Kurtz v. St. Paul & Duluth Ry. Co., 61 Minn., 18.

As already stated, a person entitled to exemption under the federal law may waive it by his own voluntary act, such as by giving a mortgage. He may also waive his exemption by acquiescing in a sale of the land to pay debts from which it is in fact exempt.

The principle involved is the same as in Ordean v. Grannis, 118 Minn., 117. In that case a judgment in a partition suit was attacked collaterally. It was claimed a sale had been made in
62 contravention of the statute, which provides that "no sale shall be made" when the liens amount to more than the value of the property. Justice Bunn said, "it may have been error to decree a sale under the facts alleged and proved; but the court had jurisdiction of the subject matter and of the parties, and the error in ordering a sale was at most an order that might have been taken

advantage of on appeal. The court had jurisdiction to order a sale in a proper case, if the pleadings of proof showed that it was improper to do so, it was error; but the order was not in excess of the court's jurisdiction and not void."

This question has arisen in other jurisdictions and the decisions have been in accordance with the views here expressed. Watkins Land Mtg. Co. v. Mullen, 62 Kan. 1; Cjerstadengen v. Van Duzen, 7 N. D. 612. See also Sigmond v. Bebber, 104 Ia., 431. In the Kansas case the court said, "Upon principle — we are fully persuaded that such judgment can only be reviewed upon appeal or other direct proceeding, and not in a collateral action." In North Dakota the same question was considered. The following language of the court is apropos here:

"The federal statute exempting federal homesteads from liability for debts contracted before the issue of patent (section 2296 R. S. U. S.) does not take such homestead after it has once become the property of the homesteader, out of the jurisdiction of the probate court. * * * The probate court in the supposed case has full jurisdiction over the property, because it forms part of the decedent's estate.

Whether it shall be sold for certain debts is a judicial ques-
63 tion, to be decided by the court, the same as any other question that arises in the course of the proceedings over which it clearly has jurisdiction. All persons who claim under the decedent, whether as heirs or as devisees, are parties to the proceedings; and they must therein assert the exemption of the land from liability to sale, if they intend to invoke the protection of the law at all. The question before the court is whether that particular land of the decedent shall be sold for debts, and all parties interested must then and there interpose any defense to a sale thereof which they may have, whether it relates to the existence of the alleged debts at all, or, conceding the claims to be valid, asserts that for such debts the land cannot be sold, because of the exemption thereof under the federal statute."

The orders of the probate court of Koochiching county were within its jurisdiction and were not void.

The judgment appealed from is reversed.

HALLAM, *J.*

64 I concur in the foregoing opinion in all respects save the conclusion that the land in question belonged to and was a part of the estate of decedent at the time it was ordered sold in the probate procedings. From the conclusion of the court upon that question I respectfully dissent. The probate proceedings were commenced after the issuance of the patent and when, under Sec. 2448 R. S. U. S. title to the land had become vested in the heirs of Norton. That statute provides:

"When patents for public lands have been or may be issued in pursuance of any law of the United States, to a person who had died, or who hereafter died, before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs,

devisees or assignees of such deceased patentee as if the patent had issued to the deceased person in his life time."

As I understand this statute the title to the land upon the issuance of the patent, though issued in the name of decedent, passed directly to his heirs, was no part of his estate and the probate court was without jurisdiction to order it sold. It is probable that, had the probate proceedings been commenced and the order of sale made after the acceptance by the federal authorities of the final proof tendered by decedent, and before the issuance of the patent, a different question would be presented. But the legal title to the land was in the general government until the issuance of the patent, and though decedent may have had an equitable title after the submission of final proofs, when the patent issued, such equitable rights were extinguished and the land became vested absolutely "in the heirs of the deceased patentee," as declared by the statute quoted, leaving no interest whatever in his estate.

BROWN, *C. J.*

65 *Authentication of Record.*

SUPREME COURT,
State of Minnesota, ss:

I, I. A. Caswell, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Ruth Doran, Respondent, vs. John A. Kennedy, et al., Appellants, and also of the opinion of the court rendered therein together with the assignment of errors, as the same now appear on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this July 17, 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

66 STATE OF MINNESOTA:

In Supreme Court.

RUTH DORAN, Plaintiff in Error,
vs.
JOHN A. KENNEDY et al., Defendants in Error.

Assignments or Error.

Now comes the plaintiff in error in the above entitled cause, and avers and shows that in the records and proceedings in said cause the Supreme Court of the State of Minnesota erred, to the grievous injury and wrong of the plaintiff in error herein, and to the prejudice and against the rights of the plaintiff in error in the following particulars, to-wit:

1. The said Supreme Court erred in reversing the judgment of the District Court of Koochiching County, Minnesota herein and ordering judgment in favor of the defendants in error.

2. The said Supreme Court erred in holding and deciding that the Probate Court of Koochiching County, Minnesota had jurisdiction to appoint an administrator, and that it had jurisdiction to order a sale of this land.

3. The said Supreme Court erred in holding and deciding that this land was a part of the estate of the deceased Edward O. Norton, and that the Probate Court could authorize a sale of same for a debt contracted by him prior to the issuance of final receipt and patent.

4. The said Supreme Court erred in not holding and deciding in this case that neither the Probate Court of Koochiching County, Minnesota nor any other State Court or Tribunal erected under the laws or constitution of the State of Minnesota, had any right
67 or jurisdiction whatever to make a judicial sale of land acquired under the homestead law of the United States, such as the land in controversy here, for debts accrued before final patent had issued, and it erred in not holding that such sale as the one in this case was void in toto and ab initio, and that its validity might be disputed in any court in any tribunal directly or indirectly.

5. The said Supreme Court erred in not holding and deciding that the sale herein made by the Probate Court of Koochiching County, Minnesota, in this case, was such a violation of the laws of the United States and of the compact under which Minesota became a State that it could not be approved under any circumstances whatever.

6. The said Supreme Court erred in holding and deciding that this land was not exempt under the Act of Congress (U. S. R. S. Section 2296) and in holding that it was subject to sale for the debts of the decedent Norton incurred by him prior to the issuance of the patent for same.

7. That said Supreme Court erred in holding and deciding that the heirs of the decedent Norton had had their day in court, and that the Probate sale could not be collaterally attacked by them or attacked in the manner in which it was assailed in this action.

8. The said Supreme Court erred in holding and deciding that the land involved was the property of the deceased entryman Norton, and that the failure of the heirs to interpose the defense of exemption under the Act of Congress (Section 2296 R. S. U. S.) against the original sale in Probate Court, constituted a waiver by the heirs of Norton of such exemption by acquiescence in the sale of the land from which it was in fact exempt.

68 9. The said Supreme Court erred in holding and deciding that the title to the land involved did not become vested in the heirs of Norton upon the issuance of patent after Norton's death as is provided by Section 2448 R. S. U. S.

10. The said Supreme Court erred in not holding and deciding that the legal title to the land was in the general government until the issuance of the patent and that when patent issued the entryman's equitable rights were extinguished and the lands became

vested absolutely in the heirs of the deceased patentee, free from all debts incurred by him prior to the issuance of such patent, leaving no interest whatever in his estate.

11. The said Supreme Court erred in not holding and deciding that the title to the land upon the issuance of the patent, although issued in the name of decedent, passed directly to his heirs, was not part of decedent's estate, and that the Probate Court was without jurisdiction to order it sold.

Wherefore the said plaintiff in error, Ruth Doran, hereby prays that said judgment of the Supreme Court of the State of Minnesota, dated July 1st, 1913, may be reversed, annulled and held for naught, and that judgment may be rendered in favor of the plaintiff in error, and that she be in all things restored to her rights, and for costs.

RUTH DORAN,
By WM. E. CULKIN AND
JOHN E. SAMUELSON,
Her Attorneys.

69 [Endorsed:] Original. State of Minnesota. In Supreme Court. Ruth Doran, Plaintiff in Error, vs. John A. Kennedy et al., Defendants in Error. Assignments of Error. Wm. E. Culkin and John E. Samuelson, Providence Bldg., Duluth, Minn., Attorneys for Plaintiff in Error. Filed Jul- 5, 1913. I. A. Caswell, Clerk.

70 STATE OF MINNESOTA:

In Supreme Court, April Term, A. D. 1913.

RUTH DORAN, Respondent,
vs.
JOHN A. KENNEDY et al., Defendants; JOHN A. KENNEDY et al., Appellants.

Petition for Writ of Error.

The petition of Ruth Doran, the respondent in the above entitled action, respectfully shows unto your Honor:

1st. That said cause is an action commenced by the plaintiff and respondent in the above entitled action against the defendants and appellants to quiet title to Lot Four (4) and the West half (W. ½) of the Southeast quarter (S. E. ¼) and the Southeast quarter (S. E. ¼) of the Southeast quarter (S. E. ¼) of Section Twenty-six (26), Township One hundred sixty (160) North of Range Twenty-eight (28), Koochiching County, Minnesota.

2nd. That the plaintiff's and respondent's title rested upon the fact that on November 12th, 1904, one Edward O. Norton made homestead entry under the laws of the United States for the land above described. That on April 10th, 1906 said Norton made final com-

mutation proof upon said homestead entry. That no final certificate or patent was issued to him under said commutation proof.

3rd. That on September 6th, 1906 the said Edward O. Norton died intestate, leaving him surviving Fred J. Norton, William Norton, Margie N. Murphy, Harriet Roche, James Cummings and Ruth Doran, the plaintiff and respondent herein, as his sole heirs at law and next of kin; that said other heirs duly sold, assigned and transferred all their respective rights, title and interest
71 in and to said above described lands and premises to the plaintiff and respondent herein, Ruth Doran, and she is the owner of the interests of all the other heirs of said deceased.

4th. That after the death of said Edward O. Norton and on March 17th, 1908, final receipt was issued by the United States Land Office to Edward O. Norton in name, and thereafter and on September 8th, 1908, patent to said land was issued by the United States to said Edward O. Norton, in name, under the homestead laws of the United States.

5th. That on March 2nd, 1909, letters of administration upon the estate of said Edward O. Norton were issued out of the Probate Court of Koochiching County, Minnesota to John A. Kennedy upon a petition in which the said Kennedy claimed an indebtedness due him by said Norton that had been incurred by said Norton prior to April 10th, 1906, the date of the making of commutation proof under the homestead act.

6th. That said petition for letters of administration upon said estate disclosed no other indebtedness than the indebtedness claimed to have been incurred prior to the making of said commutation proof, and prior to the issuance of final certificate and patent, and disclosed no other property than the land included in the homestead entry, and to which final certificate and patent were issued after the death of the said Edward O. Norton.

7th. That on February 11th, 1910, a pretended order of license to sell the property herein described, as the property of Edward O. Norton, for the alleged indebtedness of said Norton incurred and contracted by said Norton prior to his death and prior to the issuance of the patent for said land, was issued by the Probate Court of said Koochiching County, Minnesota, and on April 16th, 1910
72 the said administrator pretending to act under said license made a pretended public sale of said property. That on April 29th, 1910 said Probate Court made an order wherein and whereby it pretended to confirm said sale and the assignee of the pretended purchaser at said sale now claims an estate or interest in said premises adverse to this plaintiff and respondent, for the renewal of which this action was brought.

8th. That said cause was tried in the District Court of Koochiching County, Minnesota, and in that court your petitioner contended, and said District Court determined that the title to the land in question vested directly in the heirs of said Norton upon his death under and by virtue of the provisions of Section 2448 U. S. R. S., and that said land was not subject to sale for an indebtedness incurred prior to the issuance of patent under the provisions of Section

2296 U. S. R. S., and that the Probate Court had no jurisdiction over the land, the subject-matter of that proceeding; that the proceedings of said Probate Court were null and void, and judgment was entered decreeing that the plaintiff and respondent was the owner in fee of said premises. Thereupon the defendants and appellants took an appeal to the Supreme Court of the State of Minnesota, and in said court upon said appeal your petitioner renewed her claims as above set forth. The said Supreme Court of the State of Minnesota upon the hearing of said appeal reversed the judgment of said District Court, holding that the Probate Court of Koochiching County, Minnesota had jurisdiction of the land involved and that Sections 2448 and 2296 U. S. R. S. had no application to the facts involved, and ordered judgment in favor of the defendants and appellants, thus denying this petitioner rights, privileges and exemptions claimed by her under said laws of the United States.

9th. That on July 1st, 1913, final judgment in accord-
73 ance with the order of the Supreme Court of the State of Minnesota was duly entered and rendered by the Supreme Court of the State of Minnesota declaring that the defendants and appellants are the owners of the land in question free and clear of all claims thereto on the part of plaintiff and respondent, and for the sum of One hundred eleven and 80/100 ($111.80) Dollars. The said Supreme Court of the State of Minnesota was and is the Tribunal having jurisdiction under the laws of the State of Minnesota to render final judgment in all proceedings of the nature of the above entitled cause, and said judgment is the final judgment in said cause in favor of the said appellants and against you- petitioner.

The said final judgment of the Supreme Court of the State of Minnesota was against each and all of the rights so claimed by your petitioner in said cause, all of which will more fully appear by the record in said proceedings, now remaining in said Supreme Court of the State of Minnesota.

Wherefore, forasmuch as your petitioner believes that there was manifest error in said decision of said court against the several claims of your petitioner as hereinbefore set forth and in the final judgment in said action or proceeding, which is to the great damage of your petitioner, your petitioner prays that your Honor will examine the records of said Supreme Court of the State of Minnesota in this behalf and allow your petitioner a writ of error, to the end that said judgment and record may be brought before the Supreme Court of the United States agreeably to the laws of the United States in that behalf enacted and an order fixing the amount of a supersedeas bond.

Dated this 3rd day of July A. D. 1913.

RUTH DORAN,
By WM. E. CULKIN AND
JOHN E. SAMUELSON,
Her Attorneys.

74 [Endorsed:] Original. State of Minnesota. In Supreme Court. April Term A. D. 1913. Ruth Doran, Respondent,

vs. John A. Kennedy et al., Defendants; John A. Kennedy et al., Appellants. Petition for Writ of Error. Wm. E. Culkin and John E. Samuelson, Providence Bldg., Duluth, Minn., Attorneys for Respondent. Filed Jul- 5, 1913. I. A. Caswell, Clerk.

75 STATE OF MINNESOTA:

In Supreme Court, April Term, A. D. 1913.

RUTH DORAN, Respondent,
vs.
JOHN A. KENNEDY et al., Defendants; JOHN A. KENNEDY et al., Appellants.

Order Allowing Writ of Error.

On reading and considering the petition of Ruth Doran, respondent in the above entitled action, praying that a Writ of Error be allowed returnable into the Supreme Court of the United States to review the judgment of the Supreme Court of the State of Minnesota in the above entitled action entered on the 1st day of July, 1913, and upon the filing of assignments of error,

It is ordered that a Writ of Error be, and hereby is allowed as prayed for, and that the amount of the bond on said Writ of Error be, and hereby is fixed at Two hundred fifty ($250.00) Dollars, which bond shall operate as a supersedeas.

Dated this 5th day of July, 1913.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

76 [Endorsed:] Original. State of Minnesota, in Supreme Court, April Term A. D. 1913. Ruth Doran, Respondent, vs. John A. Kennedy, et al., Defendants, John A. Kennedy, et al., Appellants. Order Allowing Writ of Error. Wm. E. Culkin and John E. Samuelson, Providence Bldg., Duluth, Attorneys for Respondent. Filed Jul- 5, 1913. I. A. Caswell, Clerk.

77 In the Supreme Court of the United States.

RUTH DORAN, Plaintiff in Error,
vs.
JOHN A. KENNEDY et al., Defendants in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the

State of Minnesota, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Ruth Doran, respondent and plaintiff in error and John A. Kennedy et al., appellants and defendants in error, wherein was drawn in question the validity of a statute of and authority exercised under the United States, and the decision was against their validity, and wherein was drawn in question a title, right, privilege and immunity claimed under a treaty of, statute of and commission and authority exercised under the United States, and the decision was against the title, right, privilege and immunity especially set up and claimed under such treaty, statute, commission and authority, a manifest error hath happened, to the great damage of the said Ruth Doran, plaintiff in error, as by her complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and
78 openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within thirty (30) days from the date hereof in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 5th day of July, A. D. 1913.

[Seal U. S. Dist. Court, Dist. of Minnesota, Third Division.]

CHARLES L. SPENCER,
Clerk of the United States District Court
for the District of Minnesota.

Allowed by
CALVIN L. BROWN,
Chief Justice of the Supreme Court
of the State of Minnesota.

79 [Endorsed:] Original. In the Supreme Court of the United States. Ruth Doran, Plaintiff in error, vs. John A. Kennedy et al., Defendants in error. Writ of Error. Service of the within Writ of Error is hereby admitted this 5th day of July, 1913. F. J. McPartlin, Attorney for Defendants in Error. Wm. E. Culkin and John E. Samuelson, Providence Bldg., Duluth, Minn., Attorneys for Plaintiff in Error. Filed Jul- 7, 1913. I. A. Caswell, Clerk.

80 In the Supreme Court of the State of Minnesota.

RUTH DORAN, Plaintiff in Error,
vs.
JOHN A. KENNEDY et al., Defendants in Error.

Bond.

Know all men by these presents, That we, Ruth Doran, as principal, and Thomas A. Merritt and R. W. Nichols, as sureties, are held and finally bound unto John A. Kennedy, et al., in the sum of Two hundred fifty ($250.00) Dollars, to be paid to the said John A. Kennedy, et al., for which payment well and truly to be made we bind ourselves, and each of us, and each of our heirs jointly and severally firmly by these presents.

Sealed with our seals and dated this 3rd day of July, in the year of our Lord, One Thousand, Nine Hundred and Thirteen.

Whereas, the above named Ruth Doran, plaintiff in error, seeks to prosecute her Writ of Error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Minnesota.

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute her said Writ of Error to effect, and answer all costs and damages that may be adjudged if she shall fail to make good her plea, then this obligation to be void, otherwise to remain in full force and effect.

RUTH DORAN. [SEAL.]
R. W. NICHOLS. [SEAL.]
THOMAS A. MERRITT. [SEAL.]

In presence of
BAZIE McINTYRE.
W. B. MERRITT.

81 STATE OF MINNESOTA,
County of St. Louis, ss:

On this 3rd day of July, 1913, before me personally appeared Ruth Doran, Thomas A. Merritt and R. W. Nichols, to me known to be the persons who executed the foregoing bond as principal and sureties, and acknowledged that they executed the same for the uses and purposes therein expressed as their free act and deed.

W. B. MERRITT,
Notary Public, St. Louis County, Minn.

My commission expires May 7th, 1915.

STATE OF MINNESOTA,
County of St. Louis, ss:

Thomas A. Merritt and R. W. Nichols being first duly sworn, each for himself on oath says, that he is a resident and free holder

of and in the state of Minnesota; that he justifies upon the foregoing bond as follows:

The said Thomas A. Merritt in the sum of Two hundred fifty ($250.00) Dollars.

The said R. W. Nichols in the sum of Two Hundred fifty ($250.00) Dollars,

and that each respectively is worth the sum in which he so justifies over and above his debts and other liabilities, and exclusive of his property exempt from execution.

R. W. NICHOLS.
THOMAS A. MERRITT. ($250.00.)

Subscribed and sworn to before me this 3rd day of July, 1913.

W. B. MERRITT,
Notary Public, St. Louis County, Minn.

My commission expires Aug. 7th, 1915.

I hereby approve the within bond and the sureties therein named. Dated July 5th, 1913.

CALVIN L. BROWN,
Chief Justice.

82 [Endorsed:] Original. In the Supreme Court of the State of Minnesota. Ruth Doran, Plaintiff in Error, vs. John A. Kennedy et al., Defendants in Error. Bond. Wm. E. Culkin and John E. Samuelson, Providence Bldg., Duluth, Minn., Attorneys for Plaintiff in Error. Filed Jul- 5, 1913. I. A. Caswell, Clerk.

83 *Certificate of Lodgment.*

SUPREME COURT,
State of Minnesota, ss:

I, I. A. Caswell, clerk of said court, do hereby certify that there was lodged with me as such clerk on July, 5, 1913, in the matter of Ruth Doran v. John A. Kennedy, et al.,

1. The original bond of which a copy is herein set forth.
2. Copies of the writ of error, as herein set forth, one for each defendant, and one to file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 17th day of July, 1913, at my office in St. Paul, Minnesota.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

84 In the Supreme Court of the United States.

RUTH DORAN, Plaintiff in Error,
vs.
JOHN A. KENNEDY et al., Defendants in Error.

Citation.

The United States of America to John A. Kennedy et al., Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C. within thirty (30) days from the date hereof, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein Ruth Doran is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 5th day of July A. D. 1913.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

85 [Endorsed:] Original. In the Supreme Court of the United States. Ruth Doran, Plaintiff in Error, vs. John A. Kennedy et al., Defendants in Error. Citation. Service of the within Citation is hereby admitted this 5th day of July, A. D. 1913. F. J. McPartlin, Attorney for Defendants in Error. Wm. E. Culkin and John E. Samuelson, Providence Bldg., Duluth, Minn., Attorneys for Plaintiff in Error. Filed Jul- 7, 1913. I. A. Caswell, Clerk.

86 STATE OF MINNESOTA:

In Supreme Court.

RUTH DORAN, Respondent,
vs.
JOHN A. KENNEDY et al., Apellants.

Præcipe for Transcript on Writ of Error.

I. A. Caswell, Clerk of the Supreme Court of the State of Minnesota:

In preparing the transcript in the above entitled cause for transmission to the Supreme Court of the United States, in pursuance of

the Writ of Error allowed in said cause, you will please include the entire record as found in your office.

WM. E. CULKIN AND
JOHN E. SAMUELSON,
Attorneys for Ruth Doran, Plaintiff in Error Herein.

87 [Endorsed:] Original. State of Minnesota. In Supreme Court. Ruth Doran, Respondent, vs. John A. Kennedy et al., Appellants. Præcipe for Transcript on Writ of Error. Service of the within Præcipe is hereby admitted this 5th day of July 1913. F. J. McPartlin, Attorney for Defendants in Error. Wm. E. Culkin and John E. Samuelson, Providence Bldg., Duluth, Minn., Attorneys for Respondent. Filed Jul- 7, 1913. I. A. Caswell, Clerk.

88 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Minnesota, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In Witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Minnesota, in the city of St. Paul, this 17th day of July, 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

Endorsed on cover: File No. 23,805. Minnesota Supreme Court. Term No. 224. Ruth Doran, plaintiff in error, vs. John A. Kennedy et al. Filed July 29th, 1913. File No. 23,805.